

DUNNEGAN & SCILEPPI LLC
ATTORNEYS AT LAW
437 MADISON AVENUE
NEW YORK, NEW YORK 10022

212-332-8300
212-332-8301 TELECOPIER

January 15, 2021

Via ECF

Hon. Naomi Reice Buchwald
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Mattel v. GoodMeNow
20-cv-11075 (NRB)

Dear Judge Buchwald,

We represent plaintiff Mattel, Inc. (“Mattel”), and are writing in opposition to defendants’ application to modify the order entered December 30, 2020, to release some funds frozen at PayPal.

Mattel would consent to reduce the amount of the attachment to the requested \$2.8 million on the condition that PayPal transferred that amount to the Court, or defendants posted a bond in that amount, to secure any judgment rendered in this action. Because we understand that defendants will not consent to either alternative, we object to the defendants’ proposed modification of the Court’s order.

1. Because The Amount Frozen Is Subject To PayPal’s Liens In An Unliquidated Amount, There Is No Reasonable Assurance That The Existing Restraint Will Allow Satisfaction Of Any Judgment.

The funds frozen at PayPal are not necessarily defendants’ funds because PayPal is asserting a lien on them. PayPal’s letter to us dated January 7, 2021, a copy of which is attached as Exhibit A, asserted a lien on those funds to the extent necessary to satisfy claims in an uncertain amount, including the future claims of customers against the defendants. PayPal’s letter provided:

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“While the attached documents show ‘balance(s)’ in the Account(s) as of January 7, 2021, please note that this does not mean that the balance listed for each Account will remain the same or that we can turn the Account balance(s) over at this time, or at any specific future date. Pursuant to the User Agreement(s) governing the PayPal Account(s) (the ‘User Agreements’), all Accounts are subject to PayPal’s and/or its affiliates’ setoff, recoupment, chargeback, holdback, reserve, currency fluctuation, and other rights. **All Accounts are further subject to a security interest in favor of PayPal and/or its affiliates under the User Agreements.** Account balances may be reduced as a result of PayPal’s foregoing rights under the User Agreements or applicable law due to, among other matters (which may have occurred prior to PayPal’s receipt of the Writ of Execution but not yet processed through the Account(s))...)

The claim of customers against those funds could be substantial because there are a significant number of reports on the Internet that defendants sell products without delivering them.

A Facebook post provides:

Nic Nack ► PayPal •
September 9, 2020 ·

⚠ SCAM ALERT - PAYPAL SUPPORTING FRAUDSTERS
PP-D-65556327

Yokawa Network Limited Is a SCAM. They are using fake shipping ID's and PayPal is supporting their crimes. Yokawa recently changed trading name to EAROPTIC Network Limited and then changed to ADUR Network Limited. How is PayPal not reviewing this when hundreds of people are commenting with the same issues?

SCAMMERS Yokawa Network Limited supplied a tracking ID for an item NOT in my name and NOT my address as confirmed with the shipper.

This information was provided to PayPal and they closed the case IN FAVOUR OF THE SCAMMER DUE TO THEIR SCAM TRACKING ID. PayPal would not accept emails from the shipping agent, or screenshots, or PDF from their system on letterhead - unbelievable. PayPal only accept FAKE tracking ID's from illegal and dishonest companies. The courier is on my side and PayPal ignores the evidence!!

Now I am \$70 USD out of pocket, my autistic son does not have his toy and I'm FURIOUS at PayPal. Disgusting process, disgusting result, shame on you PayPal and your incompetent staff. PAYPAL PROTECTS SCAMMERS!!!!

Take a look at other people who have been scammed by the same company, information all available on the PayPal Community pages.

[Nic Nack - ⚡ SCAM ALERT - PAYPAL SUPPORTING FRAUDSTERS... | Facebook](#)

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One post on www.paypal-community.com provides:



thetrutys2 ★ Member

✓ **Yokawa Network Limited Is a SCAM**

Yokawa Network Limited Is a SCAM and Paypal will not help you. Buyer beware. They use a bait and switch and get a tracking number showing it was delivered but in fact to an incorrect bogus address. Then Paypal closes out the complaint and will not re look at the scam. Going to my bank now to refute the charges.



Solved! [Go to Solution.](#)

387 people had this problem.

[Me too](#)

[Solved: Yokawa Network Limited Is a SCAM - PayPal Community \(paypal-community.com\)](#)

A complete set of the relevant posts at this site is attached as Exhibit B.

Accordingly, if a consumer brings a class action against defendants, or if defendants at the end of this case decide to promote goodwill with their customers by refunding all of the money at PayPal rather than paying a judgment in this action, the amount currently attached may not exceed six figures.

In any event, we cannot rely upon defendants to pick the accounts that the Court should release. Defendants may be cherry picking accounts to release from the attachment that contain (a) funds that have sat in the account for such a period of time that PayPal is no longer asserting a lien on them, or (b) funds that are approaching a time when PayPal would no longer assert a lien on them. Defendants must have picked those three accounts to release for a reason. At a minimum, defendants should disclose the extent that they can currently withdraw funds in each account at PayPal.

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2. The Upper Limit Of Mattel's Potential Recovery Is Uncertain.

Mattel is asserting meritorious claims for trademark counterfeiting and copyright infringement. Defendants have not even suggested that they have a defense on the merits.

The potential statutory damages are \$2,000,000 for trademark counterfeiting, 15 U.S.C. § 1125(c), and \$150,000 for copyright infringement, 17 U.S.C. § 504. Both statutes provide for the award of attorneys' fees. 15 U.S.C. § 1117(b), 17 U.S.C. § 505. Defendants have provided no evidence concerning the extent of their receipt of revenue from the sales of accused products. In these circumstances, Mattel may be able to persuade a jury to award the maximum amount of statutory damages under each statute, and persuade a court to award reasonable fees in a significant amount.

Accordingly, without knowing the amount that would actually be available in the accounts to satisfy a judgment after PayPal exercises its liens, defendants have failed to give the Court a basis to release any funds from the attachment without subjecting Mattel to the risk that the judgment it seeks in this action will be uncollectible.

3. Transferring The Funds From PayPal To The Court Provides A Solution.

If PayPal transferred \$2.8 million to the Court, we would know that PayPal was releasing any lien on that amount and that the amount could be used to satisfy a judgment in this action.

In addition, if PayPal transferred \$2.8 million to the Court, then Mattel would not have to assume the risk that the fund will be "inadvertently" withdrawn from PayPal, and that Mattel will be without a contempt remedy. Latino Officers Ass'n City of New York, Inc. v. City of New York, 558 F.3d 159, 164 (2d Cir. 2009)(Contempt requires the "contemnor has not diligently attempted to comply in a reasonable manner."). This risk is not immaterial. So far, PayPal has (i) told us on January 4, 2021, that it could not find any accounts of defendants, (ii) told us on January 7, 2021, that it had restrained eight accounts with \$2,768,781.37, and (iii) based on

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defense counsels' representations, on or about January 12, 2021, restrained three additional accounts with about \$2.5 million, that PayPal has not yet told us about. In addition, we cannot ignore the public reports, cited above and in Exhibit B, that PayPal is paying money to defendants that it should be returning to customers.

In any event, if PayPal were willing to transfer the \$2.8 million, or any portion of it to the Court, that transfer would not impose any burden on defendants. However, if PayPal were not willing to transfer that amount to the Court, then the Court would have further confirmation that the money that the defendants are offering as security may be an illusion because it is subject to PayPal's liens.

Respectfully yours,

William Dunnegan
William Dunnegan

Cc: Katherine Burghardt Kramer, Esq.
Jacob Chen, Esq.